

B15 6.(amended) A pant product for toddlers and infants comprising: a chassis comprising an absorbent core and a refastenable elastic side panel; the elastic side panel having a length and a width; the elastic side panel being elasticized along the majority of its length and width; the chassis having a length and a width; the length of the elastic side panel being at least about 25% of the length of the chassis; and the width of the elastic side panel being at least long enough to fully surround the product when used and fasten to itself, thereby forming an elastic disposable pouch.

B16 9.(amended) A pant product comprising a chassis and one elastic back panel; where the back panel can be separated into a left side portion and a right side portion by the centerline of the product; each side portion having a length and a width; and the product further having a length and a width; the width of one of the elastic side portions being at least long enough to encircle the product when used and fasten to itself, thereby forming an elastic disposable pouch.

10.(amended) An absorbent product comprising: a chassis; an absorbent core; two discrete refastenable elastic side panels; each elastic panel having a length and a width; the length and width of each elastic panel being substantially the same; the chassis having a length and a width; and the width of each elastic panel being at least long enough to surround the product when used and fasten to itself, thereby forming an elastic disposable pouch.

B17 12.(amended) An absorbent product comprising: a chassis; an absorbent core; and two discrete refastenable elastic side panels; each elastic panel having a length and a width; the elastic panels permanently attached to the chassis; the chassis having a length and a width; and, the width of each elastic panel being at least long enough to surround the product when used and fasten to itself, thereby forming an elastic disposable pouch.

B18 14.(amended) An absorbent product comprising: a chassis; an absorbent core; and two discrete refastenable elastic side panels; each elastic panel having a

length and a width; the elastic panels permanently attached to the chassis; the length and width of each elastic panel being substantially the same; the chassis having a length and a width; and, the width of each elastic panel being at least long enough to surround the product when used and fasten to itself, thereby forming an elastic disposable pouch.

Response

- Item 1.** Applicants have reviewed the application for minor errors and have corrected the errors that have been found, as set forth above.
- Item 2.** On January 24, 2002 applicants filed a preliminary amendment and request for corrected filing receipt addressing the issues of the patents genealogy. (Exhibit 2, (please note that these papers were misdated as 1/24/01 when they were in fact mailed January 24, 2002 as shown by the post cards.)). A corrected filing receipt has subsequently been issued in this case which correctly reflects the patent genealogy (Exhibit 3) Thus, the issues raised by Item 2 of the office action have been addressed.
- Item 3.** Applicants have amended the abstract and thus, have overcome this objection.
- Item 4.** Applicants have amended Figure 1 so that 12 now appear with dashed lines to indicate that it is underneath 15. Figure 2 and the corresponding disclosure in the specification have been amended to change the designation for the front panel from 5 to 51. In figure 5 the outer member serves as the fastening panel. Support for this embodiment is expressly found at page 4, line 2, and in the drawing of figure 2, as originally submitted. (Designation 51 is not used in any other figure.) Plaintiffs have amended Figure 3 and the corresponding text in the specification to change the designation from 1 to 111. (Designation 111 is not used in any

other figure.) Thus, Applicants have overcome the objections to the drawings set forth in item 4.

Item 5. The specification has been reviewed and correction made to the usage of all trademarks to respect the nature of those marks. In all instances, the reference to a trademarked product is an example of a generic type of component that has been disclosed and described.

Item 6. Applicants respectfully traverse the criticism of the text of the specification at page 5, line 28. That text provides: “Ideally, a hot melt adhesive may be used. By way of illustration, and with out [sic]¹ any limitation on the type of adhesives that can be used, . . .” Such non-limiting language is permissible in patent specifications. In fact, in view of the recent trend of the Federal Circuit to limit and restrict the scope of claims such non-limiting language is essential to assure that the claims will be given their full scope of protection. *See, e.g., Sage Products Inc. v. Devon Industries, Inc.*, 126 F.3d 1420, 44 U.S.P.Q.2d 1103 (Fed. Cir. 1997); *Dawn Equipment Co. v. Kentucky Farms Inc.*, 140 F.3d 1009, 46 U.S.P.Q.2d 1109 (Fed. Cir. 1998); *Karlin Technology Inc. v. Surgical Dynamics, Inc.*, 177 F.3d 968 (Fed. Cir. 1999).

Item 7. The summary of the invention section has been amended to overcome the objection. The usage of the numeral 1 in Figures 1 and 3 has been corrected. Applicants have reviewed page 3, lines 27-30, which disclose the structural elements of an embodiment of the invention. That section of the discloser does not relate to the maximum amount or upper limit that the article may hold. Thus, there is no inconsistency between page 2 lines 2-3 and page 3 lines 27-30. Those disclosures relate to different aspects of the article. Moreover, the upper limit depends upon the overall construction and shape of the article. Applicants provide teaching

¹ This error has been corrected.

and examples of various upper limits that can be obtained. There is no basis under 35 U.S.C. § 112 for the examiner to object to this description and characterization of the invention.

With respect to page 4, line 11, the specification has been corrected. With respect to page 4, line 5, the specification has been corrected. With respect to the application on page 10 the specification has been amended to reference the serial number and filing date. With respect to page 16, it is not believed that Blue M Power-O-Matic 60 is a trademark. Applicants believe that its incorporation of applications by reference is proper.

Item 8. Support in the Specifications for the refastenable discrete side panels having substantially the same length can be found in Figures 1A and 1b elastic side panels 6, and 7, which have, in particular lengths and widths 18, 19 and the lengths 23 of the elastic side panels are substantially the same (see also corresponding specification to Figure 1 at page 3, lines 4-5, 19, and page 4 lines 6. This figure shows the side panels as discrete parts of the patent. Figure 1A and 1B also discloses closure devices 8 and 9 which can be refastenable (see specification at page 28, lines 22-27, which provides that refastenable closure devices are preferred.) The discrete nature of the elastic side panels is further supported by specification at pages 5, line 4 through page 6 lines 24, which disclose examples of discrete elastic panels and how those panels are attached to the pant. Support for this disclosure is found in parent serial number 09/215,865 at Figures 1A and 1B and the accompanying text which is found at page 2, lines 26-30. This parent application further discloses that the closure devices can be unfastened to remove the patent and refastened to secure the pouch after the pant has been removed. See page 3, lines 14-25. Support for this disclosure is also found in parent serial number 09/215,866 at page 36, lines 24-25, Figures 1A and 1B, page 7, lines 4 through page 8, lines 22 (which appears identical to pages 5, line 4 through page 6 lines 24 of the present

application), page 5 lines 2-18, page 31, lines 4-5 (disclosing refastenable hook type closure devices), and page 32, line 25 (disclosing refastenable panels). Applicant's further note that the genealogy of the application as set out in the first lines of the specification has been corrected.

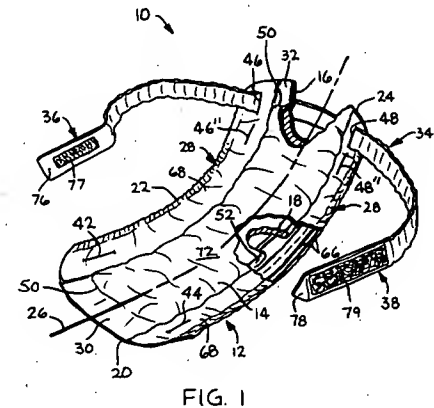
Item 9. Pursuant to the January 24, 2002 amendment the genealogy of the present application is now clearly referenced in the first lines of the specification. This application is properly characterized as a continuation as no new matter has been added. Support for Figures 1C-1D is found in lawyer docket no. 659/482 (serial number 09/215,866), which application was incorporated by reference in the first named parent for the present case, serial number 215,865, at page 3 lines 8 of that application. In other words the parent application incorporated those figures by reference and this should entitle applicants to treat the present application as a continuation as no new matter has been added, merely incorporated by reference material has now been expressly set out in the specification.

Item 10. Applicants have amended the claims accordingly.²

Item 11. The claim term, as amended now provides that—

“the chassis further having a length and a width and a front end and a back end; the chassis front end having

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² Applicants note for the public record that these amendments to the claims were non-narrowing amendments that would not give rise to a prosecution history estoppel.

a fastener;" -- thus the front end on line 4 of the claim 1 is the front end of the chassis.

Item 12. No response required

Item 13. It is respectfully submitted that Fahrenkrug, Figure 5 of which is set out herein, does not disclose several elements of claim 1-2 and 9 and thus does not anticipate that claim. In particular, Fahrenkrug does not disclose the claim element calling for the front end of the chassis to have a fastener. The fasters of Fahrenkrug are both located on the ends of Fahrenkrug's strap or belt, not on the body of the garment. Moreover, Fahrenkrug's belt 34 is not an elastic panel, let alone a "pair of elastic panels" as called for by claims 1-2, and 9. There appears to be no disclosure, teaching or suggestion to cut Fahrenkrug's single belt into two halves. Moreover, altering Fahrenkrug in such a manner would render Fahrenkrug inoperable; the halves of the belt could not be fastened together. Accordingly, Fahrenkrug can not anticipate the present claims.

Item 14. Swenson, like Fahrenkrug does not disclose a faster on the front end of the chassis as called for by the claims. It is noted that item 88, in Figure 14 of Fahrenkrug is an elastic and not a fastener. See page 7, line 46. Additionally, the elastic band 80 in those figures is enlarged to show the detail, and thus those figures do not represent an accurate proportion of the bands, which would cut against the examiners assertion that the bands are wide enough to encircle the pant when used. Accordingly, Swenson does not anticipate the present claims.

Item 15. Sageser and Buell do not disclose elastic panels that are "each long enough to surround the product when used and fasten to itself, thereby forming an elastic disposable pouch, as called for by the claims. The side panels in these references are far too short to each (individually) surround the entire product as called for by the claims.

Item 16. No response required.

Item 17. All inventors had an obligation to assignee their invention to the present assignee and in fact have done so.

Item 18. Swenson does not render the dependent claims obvious for the same reason that it does not anticipate the independent claims. It does not disclose a fastener on the front end of the chassis. Moreover, Sosalla teaches away from the present invention. Sosalla teach that the lengths of the panels should be different, and in fact quite different. Applicants on the other had required that the widths and lengths of the panels be substantially the same. Accordingly, the combination of Sosalla and Swenson can not render the dependent claims obvious.

Respectfully Submitted



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